IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTYNINTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 7874 of 2004

Between:

K.V. Durga Rao, s/o K. Papayya,

Hindu, Aged 37 yrs, working as Khalasi,

Employee No.606431, Visakhapatnam Dock

Labour Board, Visakhapatnam.

..... PETITIONER

AND

The Deputy Chairman & Disciplinary Authority,

Visakhapatnam Dock Labour Board, Visakhapatnam

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Mandamus declaring the action of the respondent in conducting Departmental enquiry against the petitioner when a criminal case is pending trial, is highly illegal, arbitrary and unjustified with a direction to the respondent not to conduct the departmental enquiry against the petitioner till the completion of the criminal proceedings in C.C. No.2 of 2004 on the file of the V Metropolitan Magistrate, Visakhapatnam.

For the Petitioner: Mr. M.V.S.Sai Kumar, Advocate
For the Respondent : Mr. P.Sri Raghuram, Advocate

The Court Made the Following :

Heard learned counsel for the respective parties.

The petitioner is aggrieved that the respondent is proceeding with a departmental enquiry during the pendency of criminal case C.C. No. 2 of 2004 instituted against him in the Court of V Metropolitan Magistrate, Visakhapatnam.

In C.C. No. 2 of 2004 the petitioner is the 2nd accused. Charge-sheet has been filed u/Sec. 468, 471 and 420 of IPC. The petitioner is alleged to have stood surety to one S.Yerrayya Reddy, who was arrested on 18.2.2003. For the purpose of obtaining his release on bail the petitioner allegedly furnished forged salary certificates and identity cards as though issued by the Assistant Secretary of the Dock Labour Board, Visakhapatnam. In respect of the same incident a memorandum of charges dated 11.9.2003 was issued charging the petitioner with the conduct prejudicial to the interests of the organisation and unbecoming of an employee, for violation of the

Visakhapatnam Dock Labour Board Employees (Conduct) Rules, 1987 r/w Rule 25 of the Visakhapatnam Dock Labour Board Staff (Recruitment and Conditions) Rules 1970. Substantially the witnesses proposed to be relied in the departmental enquiry are also some of the list witnesses.

It is well settled by a catena of authorities that pendency of a criminal case is *ipso facto* not a bar for simultaneous conduct of a departmental enquiry. Mere similarity of the allegations would not suffice to interdict the departmental enquiry. The standard of proof in a criminal prosecution and in a departmental enquiry are different. The sanctions are also distinct. The allegations in the departmental enquiry initiated against the petitioner are that he has knowingly used forged salary certificate and identity cards for the purpose of providing surety to an accused enable him to be released on bail. It would be ascertained in the departmental inquiry whether the petitioner was in any way involved in obtaining the alleged fraudulent certificates. If the accused is found guilty in the departmental enquiry of the allegations, the appropriate penalty under the discipline and control regulations will be considered by the disciplinary authority, applying the standard of proof of preponderance of probabilities. The allegations in the charge memo do not involve complicated questions of law or fact. No unusual circumstance exist to deviate from the normal principle that a departmental enquiry should not be interdicted merely on the ground that simultaneous criminal proceedings are pending.

I find no merit in the writ petition. The writ petition is accordingly dismissed. No costs.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Pvsn

To

1. The Deputy Chairman & Disciplinary Authority,

Visakhapatnam Dock Labour Board, Visakhapatnam

2. 2CD copies